

GORLICK, KRAVITZ & LISTHAUS P.C.
Andrew A. Gorlick (AG 8707)
Barbara S. Mehlsack (BM 1390)
17 State Street, 4th Floor
New York, New York 10004
(212) 269-2500
bmehlsack@gkllaw.com

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.

★ OCT 5 2009 ★

BROOKLYN OFFICE

TRIVELLA, FORTE & SMITH LLP
Christopher Smith
1311 Mamaroneck Avenue, Suite 170
White Plains, NY 10605
(914) 949-9075

Attorneys for Defendants and Third Party Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CALOGERO DIMARIA, et al.

Plaintiffs.

vs.

ANTHONY FASULO, et al.,

Defendants.

07 CV 797 (ERK)(RML)

STIPULATION OF
DISMISSAL

ANTHONY FASULO, et al.,

Third Party Plaintiffs

vs.

ZURICH AMERICAN INSURANCE CO. and FEDERAL
INSURANCE COMPANY (Div. of the CHUBB
CORPORATION),

Third Party Defendants.

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the
respective attorneys of record for Defendants/Third Party Plaintiffs and Third Party Defendants,
pursuant to Fed. R. Civ. P. 41(a), that:

1) All claims asserted by Defendants/Third Party Plaintiffs against Third Party Defendants in this matter shall be and hereby are dismissed without prejudice.

2) Third Party Defendant Federal Insurance Company ("Federal") has agreed to make available to Defendants/Third Party Plaintiffs coverage for this action pursuant to the terms and conditions of its policy and reserving all rights.

3) Defendants/Third Party Plaintiffs hereby reserve their rights with respect to any subsequent denial of coverage by Federal.

4) With respect to any claims for coverage for the transactions and occurrences that gave rise to the within action by Defendants/Third Party Plaintiffs against Third Party Defendant Zurich American Insurance Co., the statute of limitations is hereby tolled as of February 4, 2009 until four years three months and twenty eight days from the date that Federal refuses to continue providing a defense on behalf of Third Party Defendants as provided for in paragraph 2 above.

5) Each party shall bear its own fees and costs.

Dated: New York, New York
October 1, 2009

GORLICK, KRAVITZ & LISTHAUS, P.C.

WILEY REIN LLP

By: /s/
Barbara S. Mehlsack
BM1390
17 State Street, 4th Floor
New York, New York 10004-1501
(212) 269-2500
Attorneys for Third Party Plaintiffs

By: /s/
Charles C. Lemley
CL 2371
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000
*Attorneys for Third Party Defendant
Federal Insurance Company*

TRIVELLA, FORTE & SMITH

SEDGWICK, DETERT, MORAN &
ARNOLD, LLP

By: /s/

Christopher Smith
CS 9014
1311 Mamaroneck Avenue, Suite 170
White Plains, New York 10605
(914) 949-9075

Attorneys for Defendants/Third Party Plaintiffs

By: /s/

Andrew T. Houghton
AH 0744
125 Broad Street, 39th Floor
New York, New York 10004-2400
(212) 422-0202

*Attorneys for Third Party Defendant
Zurich American Insurance
Company*

SO ORDERED:

s/Edward R. Korman

Hon. Edward R. Korman, U.S.D.J.

10/2/09